

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

ROBERT THOMAS MAXWELL/G-DOFFEE
ADC #108778

PLAINTIFF

v. No. 5:13-cv-291-DPM-JJV

RICHARD CLARK, Sgt., ADC Maximum
Security Unit, *et al.**

DEFENDANTS

ORDER

After *de novo* review, the Court adopts in part and declines in part the recommendation, *No* 113. FED. R. CIV. P. 72(b)(3). Maxwell/G-Doffee's objections, *No* 114, are overruled in part and sustained in part.

1. The Court declines without prejudice Section IV(C)(2) about the verbal-abuse claims against Clark and Cooksey. Their sole argument for summary judgment on this point is that verbal threats can't support a § 1983 claim. *No* 97 at 25–26; *see also Martin v. Sargent*, 780 F.2d 1334, 1338 (8th Cir. 1985). But this general rule has exceptions. Retaliatory threats can support

*Several Defendants' names were initially misspelled or incomplete. The Court directs the Clerk to amend the docket to reflect the following Defendants' corrected names: Richard Clark, Gregory Chambers, Ned Butler, LaKenya Jackson, Edward Engstrom, William Straughn, Maurice Williams, Joyce Gooley, and Beverly Hillard. *No* 113 at 12.

a § 1983 claim, as can some threats against a prisoner's life. *E.g.*, *Proctor v. Harmon*, 257 F.3d 867, 868 (8th Cir. 2001) (*per curiam*); *Burgess v. Moore*, 39 F.3d 216, 218 (8th Cir. 1994); *Burton v. Livingston*, 791 F.2d 97, 100–01 (8th Cir. 1986). And in light of these exceptions, Maxwell/G-Doffee has alleged facts that, taken as true, at least state a claim. *E.g.*, *No 2 at 9–11, 16–17, 42–43*. Clark and Cooksey's motion for summary judgment, *No 96*, is therefore denied without prejudice on this point.

2. The Court adopts the remainder of the recommendation and overrules Maxwell/G-Doffee's other objections. The ADC Defendants' motion for summary judgment, *No 96*, is granted in part, denied in part, and denied without prejudice in part. Beverly Hillard's separate motion for summary judgment, *No 107*, is granted. And Maxwell/G-Doffee's motion for preliminary injunctive relief, *No 112*, is denied.

3. Maxwell/G-Doffee's claims against Defendants Chambers, Butler, Engstrom, Straughn, Williams, Gooley, Turner, Jenkins, Hillard, LaKenya Jackson, and Anothony Jackson are dismissed without prejudice for failure to exhaust.

4. Maxwell/G-Doffee's official-capacity claims are dismissed with prejudice.

5. Maxwell/G-Doffee's claims against Justine Minor are dismissed with prejudice.

6. Maxwell/G-Doffee's state-law claims that aren't related to his claims for excessive force, failure to protect, and verbal abuse are dismissed without prejudice.

7. Maxwell/G-Doffee's claims seeking criminal prosecution are dismissed without prejudice for failure to state a claim.

* * *

Maxwell/G-Doffee's August 2013 excessive-force and failure-to-protect claims (federal and state) must be tried. A final scheduling order will issue soon. Any second motion for summary judgment should be filed by 31 December 2015.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

21 October 2015